

# **Lake Berryessa Marina Resort**

THIS AGREEMENT, made and entered into this 10<sup>th</sup> day of March 1959 by and between COUNTY OF NAPA, a political subdivision of the State of California, hereinafter called "County", and BERRYESSA MARINA RESORT, a California corporation, hereinafter called "Concessioner,"

W I T N E S S E T H:

THAT WHEREAS, on July 31, 1958 an agreement was made and entered into between UNITED STATES OF AMERICA and COUNTY OF NAPA entitled "Management Agreement with Napa County for Lake Berryessa (Monticello Reservoir) Area", whereby UNITED STATES of AMERICA transferred to County the administration of the federally owned or controlled lands of the reservoir area of Monticello Reservoir in Napa County, which said agreement is attached hereto, marked "Exhibit A", and made a part hereof by reference thereto; and,

WHEREAS, United States and the County have not provided facilities and services for the public visiting the area and desire the Concessioner to establish and operate the same at reasonable rates within Area "G" as shown upon the Public Use Plan for said area (which said Area "G" is more particularly described as follows), to wit:

Beginning at a point on the westerly boundary of the parcel of land acquired by the United States of America for the Monticello Reservoir, now known as Lake Berryessa; said point is North 72 degrees 39 feet East 3753.0 feet from post L.P. 10 of the Rancho Las Putas as shown on the Plat of said Rancho, filed September 24, 1867 in the Office of the County Recorder, Napa County; running thence from said point of beginning North 61 degrees 32 feet East 1850 feet, more or less to the first crossing of elevation 350; thence southeasterly along the 350 foot contour to the center of Smittle Creek; thence southwesterly along the center of Smittle Creek to an angle point in the aforesaid westerly boundary of the land of the United States of America; said point is North 62 degrees 54 feet West 1616.7 feet from post L.P. 8 of the Rancho Las Putas; thence North 04 degrees 56 feet East 2383.8 feet along said westerly boundary to a point; said point is South 28 degrees 28 feet East 711.2 feet from the point of beginning; thence North 28

degrees 28 feet West 711.2 feet along said westerly boundary to the point of beginning.

WHEREAS, the establishment and maintenance of such facilities and services involve a substantial investment of capital and the assumption of the risk of operating loss, and it is therefore proper that the Concessioner be given assurance of security of said investment and of a reasonable opportunity to make a fair profit;

NOW, THEREFORE, the said parties, in consideration of the mutual promises herein expressed, covenant and agree to and with each other as follows;

1. "As provided for in the Management Agreement with Napa County for Lake Berryessa (Monticello Reservoir area) the County may issue and administer licenses, permits, and contracts to persons or associations making available services and facilities for the use of the public and for the purpose of regulating the privileges to be exercised in the area. All licenses, permits and contracts affecting the lands within the primary jurisdiction of the United States, as defined in Article 1, shall be submitted to the Bureau of Reclamation before issuance and all instruments used for such purposes throughout the area shall be subject to applicable terms of this agreement and shall contain certain language recognizing the purposes of the Solano Project and effecting releases and indemnification to and for the United States, its successors and assigns, and its officers, agents, and employees engaged in the construction and operating and maintenance of project works. The terms of such licenses, permits and contracts shall contain the following provisions:

(a) In the event of the termination of the Management Agreement between the United States and the County, the United States shall be deemed to stand in the stead of the County as grantor for the remainder of the term of this agreement: Provided, however, in the event of such termination, the United States, at any time within ninety (90) days thereafter, may terminate this agreement by giving to the Concessioner, thirty (30) days written notice

thereof and in such event the Concessioner shall have the privilege of selling or removing, for a period of ninety (90) days after termination of this agreement, or such longer period as may be determined by the Bureau of Reclamation to be reasonable, improvements which have been constructed on the premises at the sole cost or expense of the Concessioner; otherwise, after the expiration of such period of time, the title to such improvements shall vest in the United States."

(b) The Concessioner recognizes that Monticello Reservoir is a feature of the Solano Project, constructed for the primary purposes of irrigation and domestic, industrial and municipal water supply in Solano County. The fulfillment of these purposes will require that the level of the reservoir be fluctuated to meet use demand, and the United States reserves the right to vary the water level to the extent deemed necessary or desirable for the purposes of project operations. Over the years the water surface will fluctuate between a minimum elevation of about two hundred fifty-three (253) feet and a maximum of about four hundred fifty-five (455) feet. The Concessioner shall not do or omit to do, or knowingly suffer, or permit to be done by others, anything by which act or omission, any persons may be endangered or injured by the use of the reservoir area. The Concessioner shall save the United States and the County harmless from any claim on account of any personal injury or property damage by reason of anything done, or knowingly suffered or omitted to be done by the Concessioner in his exercise of the privileges granted by this contract.

2. Terms of Contract. This contract shall be for and during the term of twenty (20) years from \_\_\_\_\_, \_\_\_\_\_, 195\_\_\_\_, except as it may be terminated as herein provided;

3. Accommodations, facilities and services authorized. The Concessioner agrees to develop the said Area G in accordance with the design and area use shown upon the Public Use Plan, which said Public Use Plan is an exhibit to "Exhibit A" attached hereto, and on file in the office of the County Clerk of the County of Napa, and Concessioner agrees to install in

accordance therewith and substantially or in general conformity, with the plan and design attached hereto marked "Exhibit to Exhibit A".

The Concessioner agrees to construct with said Area G substantially in accordance with Public Use Plan the following improvements:

Calendar year 1959

- (a) Develop necessary roads as per Exhibit C
- (b) Develop water and sewage facilities as approved by Napa County specifications
- (c) Construct ten (10) launching ramps, each ramp to be 15 feet wide
- (d) Construct boat dock as per Exhibit "B"
- (e) Erect concession building and entrance building as per Exhibit "B"
- (f) Complete 200 picnic units as per Exhibit "B"
- (g) 150 ft. bathing beach

Calendar year 1960:

- (a) 200 additional picnic units
- (b) 100 camp sites
- (c) 150 ft. additional bathing beach

Calendar year 1962:

Complete development of day use area as per Public Use Plan

4. Plant, personnel and rates.

(a) The Concessioner shall maintain and operate the said accommodations, facilities and services to such an extent and in such manner as the Park Director of County may deem satisfactory provided that the Concessioner shall not be required to make investments inconsistent with an

opportunity to make a fair profit on the total of its operations hereunder. It is specifically understood and agreed that the foregoing provision of this contract relating to the making of investments inconsistent with an opportunity to make a fair, profit shall not relate to Concessioner's obligation to construct and provide improvements under Paragraph 3 of this agreement, but only to the maintenance and operation of the same after construction.

(b) All rates and prices charged to the public by the Concessioner for accommodations, services or goods sold or furnished hereunder shall be subject to regulation and approval by the Park Director, provided that such rates and prices shall not be inconsistent with an opportunity for the Concessioner to make a fair profit from the total of its operations hereunder. In determining fair profit for this purpose consideration shall be given to the rate of return required to encourage the investment of private capital and to justify the risk assumed or the hazard attached to the enterprise, the cost and current sound value of capital assets used in the operation, the rate of profit on investment and percentage profit in gross revenue considered normal in the type of business involved, the financial history and the future prospects of the enterprise, and other significant factors ordinarily taken into consideration in the determination of a fair profit or return upon investment.

Reasonableness of rates and prices will be judged primarily by comparison with those currently charged for comparable accommodations, services, or goods furnished or sold outside of the area under similar conditions, with due allowance for length of season, provision for peak loads, accessibility, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges.

5. Land and improvements. In addition to the improvements which the Concessioner agrees to construct under Paragraph 3 of this contract, the Concessioner may construct or install within the area which is the subject of

this agreement such other buildings, structures and improvements consistent with the Public Use Plan, or mutually approved revisions thereof. Specific plans and specifications of all improvements and structures to be constructed will be approved in advance of construction by the Park Director of the County, which plans and specifications may be subject to the Bureau of Reclamation as the Park Director may determine.

The Park Director shall have the right at any time to enter upon any lands which are subject of this agreement for any purpose he may deem reasonably necessary for the administration of the area, but not so as to unreasonably interfere with the Concessioner's use of such lands or the improvements thereon.

Any permanent type buildings or structures shall be equipped with flush type toilets and all toilets and sanitary installations shall be constructed and maintained in accordance with requirements of the Napa County Health Department whether such requirements are now in existence or hereafter adopted by said County Health Department.

6. Concessioner's improvements. Concessioner's improvements as used herein means buildings, structures, fixtures, equipment and other improvements affixed to or pertaining to the land assigned hereunder to use of the Concessioner in such manner as to be a part of the realty, including all such improvements as provided herein constructed upon or affixed to the lands assigned to the Concessioner and all alterations, additions or improvements thereto.

Concessioner agrees to keep and maintain all improvements upon said lands in a good state of improvement and repair during the term of this agreement and to insure such improvements against loss by fire in such amount as may be agreeable to the Park Director with loss payable to Concessioner and to County as their interest may appear at the date of a loss; County agrees to promptly restore any of Concessioner's improvements damaged or destroyed by fire during the term of this agreement to the extent that the proceeds of such fire insurance are available for such restoration.

All plans, appliances and machinery to be used in connection with the rights granted to Concessioner by this contract as well as the location and installation of such appliances and machinery shall first be approved by the Park Director in writing.

7. Accounting records and reports. The Concessioner shall maintain such accounting records as may be prescribed by the Park Director. It shall submit annually no later than February 15 in each year of the term of this agreement a written report for the preceding calendar year of operations giving such information about its business and operations under this contract as may be prescribed by the Park Director and such other reports and data as may be required by the Park Director. The Park Director shall have the right to verify all such reports from the books, correspondence, memoranda and other records of the Concessioner and of the records pertaining thereto of any affiliated company, if any, during the period of the contract and for such time thereafter as may be necessary to accomplish such verification.

8. Franchise fee. The Concessioner shall pay to the County quarterly in each year during the term of this contract a franchise for the privileges authorized herein as follows: A sum equal to three per cent (3%) of the Concessioner's gross receipts as herein defined for the preceding quarter. For said purpose the quarters of the year shall begin January 1, April 1, July 1, and October 1 and said fee shall be payable on the 30th day of each month following the close of a quarter.

The term "gross receipts" as used herein shall be construed to mean the total amount received or realized by or accrued to the Concessioner from all sales for cash or credit of services, accommodations, materials and other merchandise made pursuant to the privileges authorized in this contract including gross receipts of subconcessioners, and commissions earned on contracts or agreement with other persons or companies operating in this area, excluding intra-company earnings on account of charges to other departments of the operation (such as laundry, charges to employees for



meals, transportation, etc.), cash discounts on purchases, cash discounts on sales, returned sales and allowances, interest on money loaned or in bank accounts, income from investments, income from subsidiary companies outside of the area, sales and excise taxes, gasoline taxes, fishing licenses, postage stamps and items for which the Concessioner is accountable in full.

9. Termination of contract by County. In case of any substantial default or continued unsatisfactory performance by the Concessioner under this contract, the County may terminate this contract by the following procedure:

(a) The County shall give to the Concessioner written notice specifying the particulars of the alleged default or unsatisfactory performance.

(b) No less than thirty (30) days after receipt by the Concessioner of such notice the County shall grant to the Concessioner an opportunity to be heard upon the charges:

(c) Following such opportunity to be heard the County shall have power to determine by action of its Board of Supervisors whether there has been such a default or unsatisfactory performance;

(d) If the County shall determine that there has been such a default or unsatisfactory performance it shall give to the Concessioner written notice of such decision specifying the particulars thereof;

(e) If the Concessioner fails or refuses to remedy such default or unsatisfactory performance within such period of time as may be fixed by the County, then the County may determine this contract terminated upon such date or such contingency as it may deem proper to protect the public interest and thereupon all right of the Concessioner under this contract to use or occupy the area which as the subject of this agreement shall forthwith terminate and title to all improvements in said area installed by the

Concessioner shall vest in the County without right on Concessioner's part to remove any of the same or to recover the cost or value thereof.

10. Assignment or Mortgage. No transfer or assignment by the Concessioner of this contract or of any part thereof or interest therein directly or indirectly, voluntary or involuntary, shall be made unless such transfer or assignment is first approved in writing by the County.

11. Insurance. The Concessioner shall carry such insurance against loss by fire, public liability or other hazards as may be required by the Park Director and shall hold harmless the United States and County for all loss occasioned by operations of the Concessioner, its agents or employees.

12. Concessioner's employees. The Concessioner shall employ at least one (1) employee whose primary duty it shall be the enforcement of law and order in the concession area and who shall be approved as to qualifications by the Sheriff of the County. The Concessioner shall not employ or retain in its service or permit to remain upon any of the premises covered by this agreement, any person declared by the Park Director to be unfit for such employment or otherwise objectionable. The Concessioner shall require its employees to observe all impartiality as to rates and services and in all circumstances to exercise courtesy and consideration in their relations with the public.

In connection with the performance of work under this agreement, the Concessioner agrees not to discriminate against any employee or applicant for employment because of race, religion, color or national origin. The aforesaid provision shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause. The Concessioner further agrees to insert the foregoing provision in

all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

13. General provisions. The Concessioner shall maintain the area which is the subject of this agreement in a clean, orderly and sanitary condition and strictly obey all laws, rules and regulations pertaining to health and public safety promulgated by any governmental agency having jurisdiction over the area.

Concessioner shall maintain in boating and swimming areas within the area covered by this agreement such buoys, markers and safety devices as may be required by law or by regulation of the Park Director.

Concessioner shall participate in the Napa county annual registration and licensing of boats. The Concessioner to receive five percent (5%) of the registration fee.

Time for the doing of and performing of any act required by the provisions of this contract to be performed by Concessioner may be extended by the County at any time at its option.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands  
the day and year first above written.

COUNTY OF NAPA, a political subdivision  
of the State of California,

BY \_\_\_\_\_  
CHAIRMAN of its Board of Supervisors

ATTEST:

\_\_\_\_\_  
COUNTY CLERK of the County of Napa,  
and ex-officio Clerk of its Board of  
Supervisors

COUNTY

BERRYESSA MARINA RESORT,  
A California Corporation

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Secretary-Treasurer